HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.5794 of 2006
Date of decision : 12.02.2007

Babu Singh and others **.....Petitioners**
versus
Tara Wati and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.S.S.Sidhu, Advocate for the petitioners.
Mr.S.C.Pathela, Advocate for the respondents.

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Executing Court dated 4.10.2006, whereby property of the petitioners has been put to sale on account of non payment of compensation amount.

The learned Motor Accident Claims Tribunal vide award dated 31.1.1983 awarded an amount of Rs.1,40,000/- as compensation on account of death of Moti Ram to respondent Nos.1 to 5 in the present revision petition. Vide the aforesaid award, the Insurance Company was directed to pay a sum of Rs.50,000/- and remaining amount of compensation was ordered to be paid by the present petitioners.

In appeal against the said award, this Court by way of an interim order directed the Insurance Company to make the entire payment of compensation amount. In pursuance of the said interim order, the Insurance Company has deposited the entire amount of compensation which has since been released to the decree holders as well. The award

dated 31.1.1983 was maintained by this Court in the First Appeal vide order dated 22.8.1986 and the Letters Patent Appeal No.791 of 1986 was decided on 21.7.1997 and even the S.L.P. was dismissed on 14.5.1998. There is only variation in the amount of interest.

Thereafter the parties produced a written compromise on 10.5.2001 before the learned Executing Court. Though the statements of claimants were recorded, but the compromise was not accepted on the aforesaid date by the Court. Soon thereafter, on the same date the claimants made a statement before the learned Executing Court to the effect that no amount as per the compromise was paid to them by the judgment debtors. The order passed by the learned Tribunal on 10.5.2001 in this respect is as under:-

> "Tarawati has appeared in the Court today immediately after the passing of the above said order and stated that no amount as per the compromise Ex.CX has been paid to her, which was to be paid in the Court at the time of final decision. So, the compromise could not have become final and whether it is genuine or not shall be seen at the time of next date i.e. 25.5.2001, the date already fixed. Compliance of previous order be made before that date."

Thereafter, another application was filed by the claimants for recording of compromise on 11.6.2001. The statements of parties were also recorded on the said date, but the learned Executing Court did not record the compromise holding that the application dated 11.6.2001 made by the decree holders is not voluntary. After the said order was passed,

the present petitioners filed an application on 12.6.2001 for review of the said order, which was dismissed by the learned Executing Court on 20.10.2001 holding that fraud has been attempted to be perpetrated upon the decree holders by luring them into a compromise which has been already held as not a genuine. It was found that the petitioners are trying to take the benefit of the statements suffered by the decree holders in Court which statements were already held to have no effect on their rights.

The order dated 20.10.2001 was challenged by the petitioners by way of filing a revision petition before this Court. The said revision petition was dismissed on 3.5.2006. The learned Executing Court was directed to proceed further with the pending execution and to decide the right of the Insurance Company, claimants and also of the petitioners in respect of the compromise allegedly effected between the present petitioners and the claimants. Thereafter, the learned Executing Court has passed the impugned order holding that the Insurance Company is entitled to recover the amount of Rs.90,000/- from the driver and owner of the truck, as the claimants are not liable to return the alleged excess amount.

Learned counsel for the petitioners has vehemently argued that the claimants have given statements on 10.5.2001 and 11.6.2001 accepting the compromise and, therefore, it is the claimants who have to refund the excess amount received by them from the Insurance Company. The petitioners (i.e. driver and owner of the truck) who have entered into a settlement with the claimants, are not liable to make the payment of any compensation amount as they have paid the amount of compensation to the claimants. In any case, the said question is required to be decided by the learned Executing Court in terms of the directions issued by this Court

in revision petition vide order dated 3.5.2006.

After hearing the learned counsel for the parties and perusing the documents produced by them, I do not find any illegality or irregularity in the order passed by the learned Executing Court. A perusal of the compromise deed, Exhibit P-1, dated 10.5.2001 does not show that what amount of compensation has been paid to the claimants. On 10.5.2001 itself a supplementary statement has been made before the learned Executing Court that they have not received the compensation. The compromise, Exhibit P-1, dated 10.5.2001 has not been accepted by the Court. Therefore, on the basis of said compromise, it could have been alleged by the petitioners that the amount of compensation stands paid to the claimants by the petitioners. In respect of the application dated 11.6.2001, it is sufficient to state that the learned Executing Court has not accepted the compromise vide detailed order dated 11.6.2001. Since the compromise was not accepted, it is not open to the petitioners to allege that there was an adjustment of decree in terms of Order 21 Rule 2 of the Civil Procedure Code. Still further, there is no document on record to show that any amount was paid by the petitioners to the claimants.

In view of the above I do not find any illegality or irregularity in the findings recorded by the learned Executing Court which may warrant interference of this Court in exercise of its revisional jurisdiction.

The revision petition is dismissed.

(HEMANT GUPTA)
JUDGE

February 12, 2007
**mohinder*